IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 460 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI JEBARBEN D/O PUNJABHAI HIRABHAI & W/O VERSI MEVA

Versus

RABARI VERSI MEVA

Appearance:

MR SV RAJU for Petitioner

MS KUSUM M SHAH for Respondent No. 1

MR AJ DESAI, APP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/01/2001

ORAL JUDGEMENT

1. Rabari Jebarben wife of Rabari Versi Meva, Petitioner-original applicant has filed this Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (In short `Cr.P.C.'),

challenging the judgment and order dated 23rd July, 1993, passed by learned Additional Sessions Judge, Banaskantha at Palapur, in Criminal Revision Application No.27 of 1993. The learned Additional Sessions Judge by that order was pleased to allow the revision application No.27/93 and set aside the order dated 5.3.1993 passed by the learned J.M.F.C. for granting Rs.300/- as maintenance to petitioner applicant-wife.

2. The facts giving rise to this Criminal Revision Application are as under:

2.1 The marriage was solemnised between petitioner and Rabari Versi Meva - respondent No.1 somewhere in the year 1973. They both stayed together as husband and wife for some time and ultimately in the year 1975 wife deserted from the husband.

2.2 Somewhere in the year October, 1990, applicant-wife filed an application under Sec.125 of Cr.P.C. for maintenance against respondent No.1-husband. Before the trial Court, respondent No.1-husband contested the same and the evidence was also recorded. The learned JMFC, Deesa, by his judgment and order dated 5th March, 1993, pleased to hold that wife had left the matrimonial home because of physical and mental torture given by the husband and the husband has proper income and he is capable to maintain himself also and ultimately the learned trial Judge has held that applicant-wife is entitled for Rs.300/- as maintenance.

2.3 Being aggrieved and dissatisfied with the aforesaid order, respondent No.1-husband filed Criminal Revision Application No.27/93 before the learned Additional Sessions Judge, Banaskantha at Palanpur. The learned Additional Sessions Judge came to the conclusion that the trial Court has not properly considered the evidence on record and by judgment and order dated 23.7.1993 the learned Additional Sessions Judge has set aside the judgment and order dtd.5.3.1993 of the learned JMFC and he allowed the said application and held that the applicant-wife is not entitled Rs.300/- as maintenance.

2.4 Being aggrieved and dissatisfied with the said judgment and order of the learned Additional Sessions Judge, the petitioner-wife has filed this application before this Hon'ble Court.

3. Mr.Goswami, learned counsel for and on behalf of Mr.S.V.Raju, learned advocate for the petitioner

vehemently contended that the order of the learned Sessions Judge is contrary to law and inconsistent with the facts of the case and, therefore, same is liable to be quashed and set aside and the order of the learned JMFC be restored by giving maintenance of Rs.300/- p.m.

4. On the other hand, Ms.K.M.Shah, learned counsel for the respondent-husband has contended that the petitioner-wife has deserted matrimonial house in the year 1974-75 and she had filed this application in the year 1990. Moreover, she has not made any effort to stay with the husband and she has also not pressed any demand for maintenance for 15 years and she has kept complete silence about the demand of maintenance under Sec.125 of Cr.P.C. from the husband. She further contended that the wife had failed to prove that husband has any income by which husband can pay any maintenance to wife. She has invited my attention to relevant aspects of the findings of the trial Court as well as the Sessions Court in which there is no clear finding given by both the Courts as to what is the income of the husband in this behalf. She further submitted that in absence of any clear finding by the trial Court as well as the Sessions Court that what is exactly income of the husband, this Court may not award any maintenance amount to the wife in this behalf.

5. I have gone through the record of the case. I have heard both the learned Counsels and also perused the relevant documentary evidence in this behalf. In my view, when the trial Court as well as Sessions Court has not given any finding regarding income of the husband, it is very difficult for this Court to award maintenance in favour of the wife. If Court has to award any amount of maintenance, the Court must come to the conclusion to the effect that what is the income of the husband. In absence of the said evidence on record, it is very difficult for the Court to award any maintenance in this behalf. Over and above, she also submitted that the wife had not demanded any maintenance from the year 1974-75 though she had left her matrimonial house since 1974-75 and, therefore, it is presumed that wife is not in need of any maintenance from the husband in this behalf. Learned counsel for the respondent No.1 has cited a decision in the case of Induben Maganlal for self and as guardian of minor Tinku Vs. Maganlal Akabhai Parmar and Another reported in 1988(2) G.L.H. (UJ) 8, where the Court has held that under Cr.P.C. S.125 when Magistrate passing order of maintenance in favour of wife the Sessions Judge in revision application on reappreciation of evidence finding with the version of wife regarding

her being sent away to be incorrect and reversing the order of Magistrate, the High Court would not interfere with the order of Sessions Court. She further submitted that this Court has very limited jurisdiction and once the Sessions Court has appreciated the evidence on record, it will not be proper to reappreciate the evidence and to interfere the finding of the Sessions Court. In my view, this contention of the learned counsel for the respondent is well founded and same deserves to be accepted. In view of the same, this Criminal Revision Application is dismissed. Rule is discharged.

(K.M. Mehta, J.)

syed/